



Jerusalem Center for Public Affairs  
המרכז הירושלמי לענייני ציבור ומדינה

# Illegal Construction in Jerusalem: **A Variation on an Alarming Global Phenomenon**



Justus Reid Weiner

# Jerusalem Center for Public Affairs

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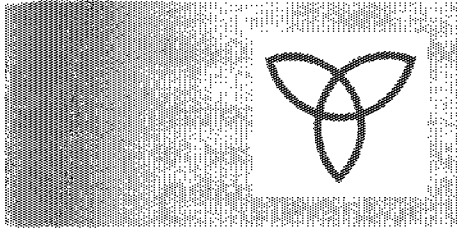
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## Dedication

For Delsa, in heartfelt appreciation of the confidence she placed in me, and for Amidan and Ma'ayan, who inspire my concern for the future of Jerusalem.

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## Cover Credits

Front cover: Aerial photograph of the Isawiya neighborhood of Jerusalem (2002) with red dots indicating illegal construction.

Back cover: Photograph of author by Joel Fishman © 2002.

Back cover: Photograph of luxury building in the Shoafat neighborhood of Jerusalem; upper floors (encircled) that are an illegal addition.

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# **Illegal Construction in Jerusalem: A Variation on an Alarming Global Phenomenon**

## **Executive Summary\***

**Impediments to Providing Quality Public Services in Jerusalem's Arab Neighborhoods / Claims that Jerusalem is Being 'Judaized' / Israeli Planning Law / Identified Causes for Illegal Building in Jerusalem's Arab Neighborhoods / Extensive Palestinian Authority Subsidies for Widespread Illegal Building / Illicit Profit: The Role of Criminal Elements in Illegal Building / The Controversy over Building Permits / The City has Authorized Plans (Exceeding the Demands of Faisal Hussein and Sari Nusseibeh) that Meet the Housing Needs of the Arabs Until the Year 2020 / The Controversy over Administrative Demolitions / The Controversy over 'Treaties' / Long-term Consequences of Illegal Building / The Global Epidemic of Illegal Building and Demolitions / Conclusions**

The struggle for sovereignty in Jerusalem remains among the most contentious of the many disputes that exacerbate the Palestinian-Israeli conflict. Interwoven with this struggle are issues relating to Israel's use of urban planning, particularly as it affects the Arab residents of Jerusalem. Palestinian and other critics of the Municipality insist, *alta voce*, that the application and enforcement of the Israeli Planning and Building Law (1965), as amended, places Arab residents of the City in an impossible situation. This accusation asserts that they are denied the opportunity to participate in the decision-making process by which their neighborhoods are planned. It follows, so it is claimed, that the Israeli urban planners exploit the law to the detriment of the Arab residents, by systematically rejecting their applications for building permits. According to the narrative, they have no choice but to build illegally, and, as a consequence, they run the risk of being snared by the Municipal inspectors. Those caught by the inspectors face economic catastrophe, not to mention psychological trauma, if City bulldozers demolish their unlicensed houses. The argument continues to the effect that Arab Jerusalemites (Arab residents of the City who reject Israeli citizenship), many of whom are poor, are discriminated against in the delivery of public services and amenities. All of the aforementioned discriminatory treatment, so the argument goes, is premeditated - aimed at 'Judaizing' Jerusalem. Thus, the Municipality stands accused of using the artifice of the planning law to force the Arab residents of Jerusalem, and their growing families, to abandon the City.

Surprisingly, despite the importance of Jerusalem, the complex matrix of the planning/illegal building/demolition/demographic manipulation issues has never been thoroughly analyzed - not by a scholar, not by an NGO, not even by the Municipality itself. Moreover, this oversight is emphasized by the chorus of condemnation emanating from NGOs in regard to demolitions carried out by the Jerusalem Municipality, juxtaposed with their silence concerning demolitions in numerous countries throughout the world. This Study will address this controversy and attempt to expose the underlying reality behind the constant barrage of contentious accusations.

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\* Readers interested in the documentation for this Executive Summary can refer to the accompanying Study and its Appendices.

## Impediments to Providing Quality Public Services in Jerusalem's Arab Neighborhoods

Before examining the causal factors behind illegal building, it is necessary to explore the oft-misunderstood and ignored antecedents that influence and stimulate illegal building. This background includes the sources for funding infrastructure projects and the enforced Arab boycott of City politics.

A good place to start is with the disparity in budgetary allocations between Jerusalem's Arab and Jewish neighborhoods and the widespread complaint that the Jerusalem Municipality furnishes an inferior level of public services to the Arab neighborhoods. This problem is long-standing in nature and ***grew out of the differential development prior to the 1967 War, when the per capita expenditure for public services in the western sector was almost five times that spent in the Arab neighborhoods by the ousted Jordanian administration.***

However, 35 years after the 1967 War, the Jewish neighborhoods continue to enjoy a higher level of public services, and underlying infrastructure, than do the Arab areas, prompting the claim of continued discrimination. One obvious reason is that the citizens and residents of Jerusalem are not, on the whole, affluent, which limits their ability to pay the City real estate taxes (*arnona*). *Arnona* remittances form the largest source of Municipal revenue. The Municipal administrations of Mayors Teddy Kollek and Ehud Olmert concluded that outside funding would have to be secured to address the infrastructure deficiencies in the Arab neighborhoods. Attempts have been made, by various methods, to do precisely that. Most productively, repeated efforts have been made to secure funding from the national government, with some success. Nevertheless, according to Mayor Olmert's projections, an additional 780 million NIS (New Israeli Shekels) of outside funding, over a five-year period, is required to raise the level of public services in the Arab neighborhoods to parity with the Jewish neighborhoods.

The second preliminary issue that needs to be discussed is the long-standing Arab boycott of the Municipal political process at the behest of the Palestinian Authority and formerly, the Palestine Liberation Organization. The Arab residents of Jerusalem are frequently portrayed as victims that pay City taxes and fees but are denied the necessities and amenities that normally accrue therefrom. The reality is much more complex. Omitted from this narrative is a decisive antecedent - the Arab residents' lack of political influence. Indeed, the 35-year-long boycott of Municipal politics by the Palestinian leadership has, perhaps more than any other single factor, prejudiced the prospects of the Arab neighborhoods of Jerusalem receiving budgetary allocations for public services and infrastructure on a par with the Jewish neighborhoods.

Significantly, as residents of the City, Israel has entitled the Arabs to cast ballots and seek office in the Municipal elections. Playing by the rules of a democracy, it would be legitimate for the Arab Jerusalemites, or their leaders, to use politics to demand a larger slice of the Municipal budget. ***Regardless of their ultimate national allegiance, Arab politicians could have made their mark in Municipal politics just as the ultra-Orthodox Jews have in Jerusalem, and disadvantaged minority groups have done in democracies elsewhere.*** With their current population, assuming the same percentage of eligible voters cast votes as in the overall Jewish sector, ***they could elect seven or eight members to the City Council.*** Such a bloc could well cast the swing votes on many issues. Trapped by their leadership's myopia, the Arab Jerusalemites have never capitalized on the essence of municipal politics - the building and funding of good schools, paving streets, furnishing public transportation, allocating tax assessments, and the like. The day-to-day needs of the Arab residents of Jerusalem are subordinated to the Palestinian leadership's attempts to import national issues, like sovereignty and borders, into Municipal politics.

Due to the Palestinian leadership's policy of non-cooperation or, as it is often called, steadfastness, Jerusalem Arabs do not present themselves as candidates for the City Council.

Consequently, they have had no *direct* role in the democratic political process by which the City is governed. The vacuum caused by their enforced absence has, to some extent, been filled by certain individuals: certain Jewish members of the City Council who champion Arab rights; the *Mukhtars*; the neighborhood committees; the village councils; the Mayor's Advisor for Neighborhoods; and the Mayor's Advisor on Arab Affairs (recently renamed 'The Mayor's Advisor on East Jerusalem Affairs'). Most Arabs, however, refuse to participate openly in or cooperate with the Municipal administration, either because they reject any act that might be construed as submitting to Israeli rule or because others have intimidated them.

Any cooperation with the Municipality is an anathema to the Palestinian Authority. Its methods and aspirations were summed up in a poster distributed by Yasser Arafat's Fatah faction in the 1998 Municipal elections. It states that, "***not recognizing legitimacy*** of the Israeli occupation is ***more important than our day-to-day services....*** We in the Fatah movement call our holy people to boycott the elections and to fight a war of existence and identity" (emphasis added). Indeed, this poster expresses the Palestinian Authority's calculation that the struggle for equal, day-to-day public services is trumped by their national political objectives. Unfortunately, this premeditated refusal to cooperate in running the City inevitably impacts the quality of public services in the Arab sector.

### Claims that Jerusalem is Being 'Judaized'

The core accusation leveled at the City is that the alleged discriminatory planning policy is motivated by a furtive objective - to 'Judaize' Jerusalem. Consequently, the veracity of this charge needs to be ascertained before discussing the specific issues of illegal building. It is claimed that the entire planning scheme of the Municipality is geared to increase, or at least maintain, the Jewish percentage of the City's population. Denunciations from across the Arab and Islamic worlds refer to this as the 'Judaization' of Jerusalem. Upon examination, however, it is clear that there is no factual basis for these claims and, indeed, the reverse is true. ***The Jewish population has, since 1967, actually decreased as a percentage of Jerusalem's population.***

For more than 25 years the 'plot to Judaize Jerusalem' has rendered various political opponents of Israel apoplectic. A few examples will suffice. As far back as 1978, UNESCO condemned Israel for "continuing to Judaize" Jerusalem. During the original *Intifada*, the Unified National Leadership of the Uprising issued a leaflet that warned against "the systematic attempts to Judaize Jerusalem." Subsequently this claim, repeated often by Yasser Arafat, has become a chorus, repeated in many forums far from the Middle East. For example, Arafat's charges regarding Israel's 'Judaization' of Jerusalem were covered in the January 24, 1998, *Los Angeles Times* and in his July 29, 1998, speech to the Organization of the Islamic Conference's Jerusalem Committee. ***Arafat stated, "We shall...save holy Jerusalem from the Judaizing monster"*** (emphasis added). Likewise, the Palestinian intellectual Edward Said published an opinion piece in the English newspaper *The Observer*, which accused Israel of attempting "to 'Judaize' what was formerly Palestinian about East Jerusalem." Finally, despite the fact that Jordan is a country at peace with Israel, on September 10, 2001, the Secretary General of Jordan's Royal Committee for Jerusalem Affairs condemned the "Judaization of Jerusalem."

Before considering the accuracy of these claims it is important to grasp that during the entire 100-year period that preceded the emergence of the modern State of Israel, Jews constituted the largest component of Jerusalem's population. By the 1880s, all sources acknowledged that Jews constituted a majority in the City. Data from the British Mandatory period, between the world wars, reflected the Jews comprising approximately 60 percent of the total population in the City, with the remainder divided almost equally between Muslims and Christians. According to the (separate) Jordanian and Israeli censuses of 1961, in their respective zones, the City's aggregate population was comprised of 72 percent Jews, 22 percent Muslims, and 5 percent Christians.

The frequent assertion that Israel uses the planning law and, in particular, the purported refusal to grant construction permits and the demolition of illegal structures to discourage Arabs from living in the City makes no sense **even if, for the sake of argument**, one assumes such a demographic policy exists. Had there been an Israeli policy to rid Jerusalem of its Arab inhabitants, or to discourage them from building, the Municipality could have turned to much simpler (and quieter) inducements. Measures *not* taken were to refuse to connect them to the Israeli water network and/or not to extend the rights of residency to those Jerusalem Arabs that declined Israeli citizenship.

Most importantly, despite the persistence and vehemence of the 'Judaization' claim, demographic information since 1967 belies this indictment. ***Indeed, the non-Jewish component of Jerusalem's population has steadily increased since 1967 when it stood at 26.6 percent, to 31.7 percent in 2000*** (Appendix 7A). Further, it is projected that this percentage will continue to expand, reaching 37.8 percent in 2020 (Appendix 6A). This is the consequence of a number of factors including the higher fertility rate of Arab residents, net out-migration of 7,000 to 8,000 secular Jews per year, and employment opportunities that have attracted many Palestinians from the West Bank. According to Israel Kimhi, a former Municipal City Planner, "paradoxically, the Arab population of Jerusalem and its environs increased more rapidly over the past 30 years under Israeli rule than during any other period in the twentieth century." Moreover, ***since 1967 new Arab construction has outpaced Jewish construction***.

To the surprise, or delight, of those who have publicly campaigned against the presumed shift in favor of the City's Jewish majority, ***the actual divergence has been in favor of the rapidly growing Arab minority***. Might it be that the pace of this transformation has not satisfied those who campaign regularly against the supposed 'Judaizing' of Jerusalem?

### Israeli Planning Law

As in other countries, Israeli planning law differentiates between legal (licensed) and illegal (unlicensed) building. It is helpful to briefly describe the standards and procedures that apply throughout Israel and how controversy arose when they were applied in the Arab neighborhoods of Jerusalem.

Planning in Jerusalem began during the three decades of the British Mandate. As in other historic cities, planning schemes must balance preservation against development. From the outset, the objective of the planners was to preserve Jerusalem's special character and flavor. This is accomplished by dictating the limits of an individual's rights with regard to his/her land. Simply put, private rights have to be weighed against public needs. Among the most misunderstood features of the Israeli Planning and Building Law is the requirement that ***every resident*** wishing to build (including by adding permanent additions) ***must comply with certain standards and obtain a permit***.

To understand how urban plans are created in Jerusalem, it is necessary to look at the overall tiered structure that is formulated in the Planning and Building Law. There are four levels of plans. The overall plan is known as the 'national outline scheme.' Its function is to lay down the planning for the whole of the area of the State. The next level of planning is known as the 'district outline scheme.' Its object is to determine details necessary for the implementation of the 'national outline scheme' in each district and any matters of general importance to the district. The third level of planning is known as the 'local outline scheme.' Its purpose is to monitor the development of land within the local planning area, while safeguarding the assignment of agricultural purposes to suitable lands. The fourth level of planning and the one of interest for this Study is known as the 'detailed scheme.' The 'detailed scheme' specifies what land can be used for residential construction and what is set aside for other uses. It also details the maximum

height, setbacks, and building percentages in residential construction. When the local outline scheme doesn't have appropriate provisions, a detailed scheme may enact provisions.

Before a permit to construct a building can be issued by the Municipality, Israeli law requires approval of a statutory plan by the Jerusalem District Authority. A statutory plan includes the third and fourth levels of planning mentioned above. An 'urban plan' refers specifically to the third tier of planning (local outline scheme). The colloquial term 'urban planning' refers generally to the collective impact of the various levels of planning within a particular area.

Urban planning is not something unique to Jerusalem or Israel, but a burgeoning, worldwide trend. In fact, urban development, in the modern sense, requires painstaking urban planning. *One American judge described the planning process as bringing to bear "the insights and the learning of the philosopher, the city planner, the economist, the sociologist, the public health expert and other professions concerned with urban problems."* A brief description may be helpful in grasping the magnitude of the task that faces those who conscientiously plan Jerusalem's future, aware of the City's special meaning to millions of people everywhere. They must study what exists - infrastructure, housing, roads, topography, open areas, the commercial sector, industrial areas, etc. Next, they must predict future needs. They must take care to preserve open space, in particular the valleys and the green belt around the Old City's walls, priorities inherited from the British planners who preceded them. Also, attention must be paid to preserving historical structures, holy sites, archaeological excavations, and vistas. Planners must factor in the risk of natural (i.e., earthquakes) and man-made (shellfire, explosions, and terrorist attacks) disasters, and protect the public against structures that are insufficiently strong to bear the load (i.e., the Versailles wedding hall collapse). Overriding budgetary constraints must be factored in, too. Still more problematic, the already composite planning process in Jerusalem, which is inherently value-laden in nature, has become entangled in the Israeli-Palestinian conflict.

#### **Identified Causes for Illegal Building in the Arab Neighborhoods**

*Two factors have been identified as the causes of illegal building in the Arab neighborhoods of Jerusalem: poverty and cultural preferences.* Poverty is often highlighted as a leading cause of illegal building in the Arab sector. Thus it is asserted that poor people with large families can ill afford to approach the City for a permit when they build or expand their living unit. A closer examination reveals the nuances in the 'poverty' explanation for illegal construction. That is, economic distress is more prevalent in some of the poorer southern Arab neighborhoods than in the more affluent north, where many empty, completed apartments dot the landscape of Beit Hanina, Shoafat, and Isawiya. Interestingly, despite the Arabs' relatively lower average incomes, the post-1967 pace of Arab construction in Jerusalem has not been measurably inhibited. A 1997 study prepared by Israel Kimhi revealed that, since 1967, Arab building in Jerusalem has outpaced Jewish construction. This conclusion was based on an examination of Municipal tax records and corroborated by aerial photographs (Appendix 4). According to Uri Bar Shishat, the Director of the Policy Planning Department of the City Engineer, this remains true in 2002.

As for the cultural factor, it is often noted that Arab society prefers to live village-style, with few multi-story buildings. Traditionally, they spread out over a lot of land with very low-density housing units. However, the role played by cultural factors is not as significant as is often portrayed, and attitudes and norms towards land use are changing. For example, in recent years the Arab housing pattern has been evolving from single or two-family homes to taller buildings containing several apartments. Other Arab cultural factors include the traditional unwillingness of landowners to exchange the plots they inherited and/or to give up a significant part of their holdings for public infrastructure.

It is often asserted that poverty and cultural inclinations are the primary causes for the current calamitous situation. While poverty and culture undeniably play a role in illegal

construction, they are eclipsed, in this Author's opinion, by the political and economic factors described in the following two sections.

### **Evidence of Widespread Non-compliance Subsidized by the Palestinian Authority**

The Palestinian leadership offers various justifications and apologetics for their non-compliance with the urban planning mechanism as it applies to Jerusalem. Dr. Sari Nusseibeh, the Palestinian Authority's Political Commissioner of Jerusalem Affairs, stated that after the 1967 War the Municipality was interested in spreading its authority by annexation and demographic change, with the intent of excluding as much of the Arab population as possible. What Nusseibeh calls "settlements" [new Jewish neighborhoods] were, in his view, created to augment the Jewish demographic majority. Nusseibeh stated, "as a result a competition was created between Palestinians and Israelis over assertion of territory." Nusseibeh continued, "[t]he net result of this has been, as you look at Jerusalem, a *disaster as far as the environment* and the City is concerned. *If you look ahead, this disaster is going to become even more tragic unless people take another look and begin seriously, once again, to plan*" (emphasis added).

In the opinion of this Author, Nusseibeh's "competition" theory explains only a small part of the massive wave of illegal Arab building. The two dominant factors are, as will be demonstrated below, *the direct sponsorship of illegal construction by the Palestinian leadership and simple criminal avarice*. As regards the direct sponsorship, tens (or perhaps even hundreds) of millions of dollars have been raised and expended to advance the political objectives of the Palestinian leadership via subsidizing and encouraging massive illegal construction in the Arab sector of Jerusalem. Evidence of the central role of the Palestinian Authority is clear from dozens of internal documents that this Author was able to access. The following illustrative statements and sources demonstrate this pattern:

- In an interview, Faisal Hussein, then a Member of the PLO Executive Committee in Charge of the Jerusalem Portfolio, gave to the Egyptian magazine *El-Ahram Al-Arabi* in June 1997, he was quoted as stating, "[t]he Palestinian program is to create a Palestinian belt around the Israeli belt [of post-1967 new neighborhoods]." He continued, "[t]he most important Palestinian challenge is building, even without permits."
- CNN has publicized the theme of Jerusalem being the site of a "demographic war" between Palestinians and Israelis. For this program, CNN interviewed Khalid Tufakji, a Palestinian demographer who worked out of the Orient House (then the PLO's political headquarters in Jerusalem). Tufakji stated, "[w]e can build inside Jerusalem, legal, illegal - rebuild a house, whatever we can do. *Maybe we lose ten houses, but in the end we build 40 more houses in Jerusalem*" (emphasis added).
- On September 11, 2000, Mhahfat El Quds Jamil Othman Nasser, the Palestinian Authority's Governor of the Jerusalem District, wrote to Yasser Arafat on the official stationery of the Palestinian Authority's Ministry of Interior. The letter, as shown in Appendix 8G, states that *any Arab who builds in Jerusalem has accomplished a national act of the highest order*. It further states that the firm stand of the [Arab] residents protects the *Arabization of Jerusalem* and protects their land from invasion by [Jewish] settlements. Nasser requests Arafat to follow up by paying the fines assessed against those who build illegally. *Arafat's own handwriting* appears on the side of the typed letter, instructing that the matter should be forwarded to Sami Ramlawi, the Director of the Palestinian Authority's Ministry of Finance, for attention (emphasis added).
- Also revealing was the March 21, 2001, letter from Mhahfat El Quds Jamil Othman Nasser to Sami Ramlawi. It concerns a fine of 75,000 NIS assessed against Assan Machmad Shaban for building without a license. Nasser states that, *according to Arafat's instructions for*

*these cases, Ramlawi should instruct the Palestinian Authority's Ministry of Finance to pay the fine* (emphasis added).

- At a conference that took place on January 7, 2002, at the Jerusalem Center for Women, Hatem Abed El-Khader Eid, a member of the Palestinian Legislative Council representing the Jerusalem district, ***proudly announced*** that, during the last four years, ***Palestinians have erected 6,000 homes without building permits***, out of which only 198 were demolished. Eid's statement regarding the massive illegal building campaign, and his mention of the figure 6,000 illegal living units, was also picked up in the weekly newspaper *Jerusalem*. Eid declared, ***"we in the Palestinian Authority are willing to build ten homes for every house demolished by Israel"*** (emphasis added). According to a report in the newspaper *Ha'tsofeh*, Iran, Saudi Arabia, and the PA are among the sources of funding for the wave of illegal construction in Jerusalem .

These examples demonstrate something striking that goes beyond the extensive effort Arafat and his senior subordinates have made to subsidize illegal construction in Jerusalem. That is, this ***well-financed campaign involving the Palestinian leadership, up to and including Arafat, has not, to the best of this Author's knowledge, been exposed, let alone analyzed, in even one of the numerous NGO reports*** that focus on illegal construction and/or demolition. This silence can only suggest ***an active disinterest in revealing one of the two major causes of illegal building*** - that is, efforts by the Palestinian leadership to enlarge their demographic foothold in the City via endorsing, massively subsidizing, and prioritizing widespread illegal construction.

#### **Illicit Profit: The Role of Criminal Elements in Illegal Building**

A no less important causal element in the illegal building epidemic is the pursuit of illicit profit. This factor can be termed 'economic,' but not in the sense this word is commonly used. It is often asserted that poor Arab families, with many children, have no alternative but to add additional rooms onto their living units in violation of the Planning and Building Law. Certainly such 'economic' motives do exist - often involving poor Jews as well as poor Arabs. Their minor additions to existing legal structures, however, should be distinguished from the wave of new construction by ***criminals who erect entire structures in pursuit of a quick profit***. These law-breakers often build multi-story, luxury apartment buildings suitable for rental or sale to the affluent. Even a cursory tour of the hundreds of upscale apartment houses, some of which are photographed in Appendix 3, will give the reader a sense of the magnitude of the sums involved in illegal construction in the Arab sector of Jerusalem. ***These four-, six-, and eight-story apartment houses were not put up by, or for, Arab families living in poverty***. Indeed, any persons living in such illegal structures, if and when the City demolition crew arrives, are likely pawns in a cynical game motivated by criminal greed.

As with the case of the Palestinian Authority's political subsidies, not one of the NGOs has identified the preeminent motivation of old-fashioned greed in the illegal building epidemic. Why are they silent? The leading weekly newspaper *Kol Ha'ir* ran an impressive investigative article describing how the Palestinian Authority authorized a criminal gang of Arab builders. Some of these criminal elements have formed links with senior officials in the Palestinian Authority's intelligence and security services who also want to get rich quickly. Using high quality forged documents of land ownership, these criminals encroached on land owned by Arabs living abroad, property of the old and the weak, and even land belonging to the Waqf (the Islamic Religious Endowment), by erecting major structures in Beit Hanina and elsewhere. Indeed, the Waqf, usually thought of as a powerful institution enjoying the good grace of the Palestinian Authority, felt compelled to take the awkward step of complaining to the Municipality. Where were the NGOs? One City official complained that the NGOs only get involved at a later stage. That is, when the Municipality commences the process of administrative demolition, the criminals



complain to the NGOs and the media, hoping they will stigmatize and stymie the law enforcement process.

### **The Controversy over Building Permits**

One of the primary accusations leveled at the City is its alleged unwillingness to grant building permits to the Arab residents of Jerusalem. It is often claimed that the Arab residents of the City who flout the permit process do so as a last resort, since the City never or seldom issues permits for them to build legally, even when their ownership of the land is not in dispute. A few typical examples illustrate these claims. A report by the Palestinian rights organization, Al-Haq, accuses Israel of "refusing to grant them building permits," and "[pursing a policy aimed at] altering the ethnic composition of...Jerusalem." Similar accusations appeared in the English language Palestinian weekly newspaper *The Jerusalem Times*, which claimed that the "building laws in effect...pose a serious obstacle in the face of Palestinians wishing to obtain building permits," alleging that the cost of such permits "reach[es] upward of \$30,000." This article goes further to assert that the number of permits granted is "no more than a few dozen annually, granted after a wait of one to three years." Not one of these baseless accusations is true.

First, contrary to the claim regarding "a few dozen annually," the average number of permits issued to Jerusalem Arabs annually during the past five years is 183, and the waiting period (for simple applications) is four to six weeks, not "one to three years." Further, an unfortunate result of the Palestinian Authority-enforced boycott of the Jerusalem Municipality is that more Arabs do not file applications. Moreover, the percentage of applications that result in the issuance of a building permit is virtually identical in Arab and Jewish neighborhoods. Second, the fees for a building permit consist of three components, two of which are based on the City's efforts to recoup some of the expenses it incurs in connecting a residence to the water supply and sewage lines. For a typical housing unit in the Arab areas of Jerusalem measuring 72-square-meters (the approximate size of an average living unit) on a 250-square-meter plot of land, the following charges are assessed:

- a connection to the water system fee of 5,917 NIS (\$1,220 U.S.);
- a building fee of 1,290 NIS (\$266 U.S.); and
- a sewage connection fee of 10,285 NIS (\$2,120 U.S.).

The total for these fees comes to 17,493 NIS (\$3,607 U.S.), approximately one-tenth the sum mentioned in the above-mentioned *Jerusalem Times* article. The fees are collected according to a sliding scale, equally in all of the neighborhoods of Jerusalem, whether Arab or Jewish.

Third, far from "strangling" Arab development, or in the words of Al Haq's fantastic accusation, "creating a nation of homeless and dispossessed," the City expends considerable effort to facilitate the routine issuance of building permits to those Arab residents who apply. Al Haq's nonsense about strangulating Arab development is readily disproved by even a cursory look at aerial photographs in Appendix 4, not to mention the fact that since 1967 Arab building has outpaced Jewish building in the City, as discussed above. Fourth, their foray into international law, characterized by invented standards and irresponsible accusations, is rebutted in Section VI. C 3 and 4 of the Study. Fifth and finally, Appendices 2, 6B and 6G of the Study demonstrate that *if* the Arab residents who build illegally were to first try obtaining a permit, their prospects would be excellent.

### **The City has Authorized Plans (Exceeding the Demands of Faisal Hussein and Sari Nusseibeh) that Meet the Housing Needs of the Arabs Residents Until the Year 2020**

Contrary to the repeated claims that it is impossible for Arabs to build legally in Jerusalem, the attached map (Appendix 1) and chart of various Arab neighborhoods (Appendix 2), provide

clear evidence that the opposite is true. ***The approved plans in more than 90 percent of the Arab neighborhoods, marked in yellow on the planning map (Appendix 1), authorize the issuance in excess of 33,000 permits for new housing units in the Arab sector.*** Except in isolated neighborhoods where the landowners have been reluctant to come to an agreement via the process of unification and reparceling (exchanging land to rationalize planning), all that is required to actualize this potential is for the owners of the land to request and receive permission under the routine procedures that apply throughout the City.

Neither Nusseibeh nor Hussein can be accused of selling short the housing needs of the Arabs of Jerusalem. Yet, the up-to-date facts indicate that ***the needs that they forecast can be more than met***, without any need to build illegally, within the existing urban plans of the City. ***Nusseibeh's calculation of the needs of the Arab Jerusalemites, "about 20,000 units,"*** deserves careful consideration alongside the similar estimate of his predecessor, Hussein. In the mid-1990s, Hussein put out a 23-page booklet encouraging diaspora Palestinian and other private investors to "preposition themselves at an early stage...to profit." Projecting some 15 years into the future, ***Hussein wrote that by the year 2010 the Arab population would need about 26,200 new residential units***, including those required for returnees (Palestinian refugees) and tourists. Since the current *Intifada* started neither returnees nor tourists are arriving in significant numbers, but as Hussein did not furnish any numerical breakdown, it is impossible recalculate his global figure of 26,200. Nor did Hussein make any allowance for the enormous number of unoccupied apartments in the Arab neighborhoods. Yet even accepting Hussein's full figure, ***the Municipality has already approved plans, intending to meet the projected Arab needs for the next 18 years, that authorize in excess of 33,000 units.*** Tellingly, this significantly exceeds the numbers demanded by either Hussein or Nusseibeh and translates to a ***housing potential that surpasses the anticipated population growth.*** In all, it is clear that the core assertion of the critics - that the City will not issue building permits to Arabs - is today demonstrably false.

Actually, the City expends considerable efforts in assisting Arab residents who wish to build ***legally.*** Architects, engineers, entrepreneurs, and lawyers who prefer not to practice their profession in Hebrew, or who have difficulty doing so, can rely on an Arabic-language planning brochure (Appendix 8A), the Municipality's Arabic Internet website, and individual assistance from Arabic-speaking City employees. Similarly, professional translators have translated 23 of the urban plans for Arab neighborhoods into Arabic. These services make applying for and obtaining a building permit both simple and routine for those who are willing to make the effort.

It is clear that the core assertion of the critics - that the City will not issue building permits to Arabs - has today been shown to be tendentious. Applying for and obtaining a building permit is both simple and routine. However, ***based on the limited number of applications for building permits in recent years, the Arab residents of the City have not taken full advantage of the potential that exists.*** Simultaneously, the number of Arab violations of the Planning and Building Law has skyrocketed. Already in 1988 an internal memorandum presented to then Mayor Kollek warned that "[t]he situation is fast getting out of control." Again in 1991 a department memorandum warned, "[t]he situation is deteriorating from day to day." Additional internal warnings were sounded in 1993 and 1994. In 1996 the extensive Eitan Meir Report carefully reviewed the impact of illegal building on the quality of life. During the period 1996-2001, City inspectors reported nearly 4,000 violations in the Arab neighborhoods. Experts who study aerial photographs believe this number represents only 30 percent of this problem. Other authorities have come up with various estimates of the extent of the problem. For example, Bar Shishat estimates that in recent years 2,000 to 3,000 illegal living units have been erected in the Arab neighborhoods of Jerusalem. Israel Ben-Ari, the City's Deputy Manager of the Licensing and Inspection Department, made a study using aerial photographs of the Arab neighborhoods, comparing images from the end of the year 2000 with similar photographs taken one year earlier. He identified 1,000 new illegal buildings that had been erected during that twelve-month period. Ben-Ari did not want to estimate the total number of living units contained therein, but he noted

that some buildings contained only one living unit, while others had between four and ten units. It stands to reason that if the average number of units per building was five, then the additional illegal housing constructed, during that one-year interval, was 5,000 units. This estimate is close to the number 6,000 proclaimed by Hatam Abdel Khadir Eid, a member of the Palestinian Legislative Council, although he was not specific as to the time frame he was referring to. In sum, the knowledgeable sources all agree that ***thousands of illegal units are going up. Extrapolating from the assessments, the number might well exceed 10,000*** if the tally were to begin five or ten years ago.

This Author visited the City's permit office and walked through the process of obtaining a permit with the guidance of an official who handles such applications. To reiterate, the taxes and fees charged are uniform for living units of identical size on the same size plot, regardless of whether it lies in a Jewish or Arab neighborhood. If the application is of a simple nature (not exceeding the local limitations as to area, number of floors, etc.), as most are, the Department of Information can usually give a preliminary ruling on the spot. After completing the necessary forms, the applicant makes a down payment amounting to 20 percent of the total cost of the fees that will be payable if the application is approved. The local committee rules on the application, typically with a turnaround time of a month to six weeks, which is comparable to the waiting time for permit applications in England.

If the application for a building permit embodies a request for a variance (i.e., additional density or floors), the application procedure is lengthier. This is primarily due to the need to publicize the request and to evaluate any objections raised by neighbors. Yet, when substantial building projects involving a requested variance are proposed in the Arab sector, the City works with the applicant to advance the application process. Thus, the builder Atman Halk's project in Beit Hanina was licensed. Likewise, the housing projects of the Association of Arab Teachers, also in Beit Hanina, and that of the employees of the Waqf, in Sawahna (Wadi Joz), have been granted permits.

### **The Controversy over Administrative Demolitions**

No single planning policy, or practice, is as controversial as the City's demolition of illegal structures. Similar to the allegations of 'Judaization,' demolitions by the Municipality have generated a refrain of condemnation by NGOs and even foreign governments. To comprehend this process it is necessary to outline the procedures involved in demolition.

***Precise and demanding procedures precede the issuance of an administrative demolition order. The exact same procedure applies in all parts of the City.*** According to a policy decision of Mayor Olmert, the Municipality ***only issues a demolition order when it is not possible, even retroactively, to receive a building permit under the urban plans in effect.*** Demolition orders can be set into motion if the illegal structure is built on a roadbed, a green area, on land stolen from an absentee, or on government land intended for a school or other public facility. Other violations are typically dealt with by opening a criminal file against the builder. This usually results in a fine being assessed by the court.

Attorneys representing persons engaged in illegal building frequently use frivolous delaying tactics in Court to block the City's enforcement process. These attorneys are portrayed as serving the interests of their clients and of the Arab sector generally. In actuality, they are prejudicing the long-term interests of the Arab sector. By frustrating the planning scheme, these attorneys, and their clients, deface the landscape for the indefinite future with structures that would not meet ***any*** modern planning standards.

Local and international NGOs, including Amnesty International, have led the efforts to stigmatize the Municipality for enforcing the planning law. At the outset, it should be observed

that many NGO press releases and studies depict isolated examples of questionable demolitions, rather than presenting a systematic or representative overview of the overall planning process, framing their condemnation of the Municipal policies in the terminology of human rights law, humanitarian law, and international law. The NGOs seem willing to recite any incidents that might be viewed as outrageous behavior by the Municipality of Jerusalem or the State of Israel. These misrepresentations are frequently based on unverified accusations of unnamed, politically motivated sources. This would be unobjectionable if they also informed the public that the 'law' they reference is soft, ambiguous, and/or less than authoritative. They do not.

### The Controversy over 'Treaties'

A recent Municipal initiative aimed at giving the Arab residents of Jerusalem a stake in planning is the 'treaty,' an informal agreement between City officials and the Arab residents of interested neighborhoods. The objective is to involve the residents in planning their own neighborhoods. These treaties arose out of a history of widespread illegal construction which, had the provisions of the Planning and Building Law been fully enforced, would have prompted the demolition of thousands of illegal structures. Instead, Yossi Cohen, the Mayor's Advisor for Neighborhoods, *envisioned the 'treaty' as a novel way to plan together for a better future.*

Hod El Tabel (northern Beit Hanina) was an area that had not been the subject of urban planning. In November 1999, the Chairman of the Beit Hanina Community Development Association turned to Cohen requesting the assistance of the Municipality in approving an urban plan that they would draft. The City Engineer agreed. The residents of Hod El Tabel signed a treaty (in Arabic) with the Municipality. It stated, *inter alia*, that until permits could be issued under the forthcoming plan, the Municipality would refrain from demolishing illegal structures. Concurrently, the residents of Hod El Tabel agreed to stop building illegally. Most of the residents of Hod El Tabel, 83 in all, signed the treaty, despite threats from the Palestinian Authority (Appendix 8C). Within two years an up-to-date City plan that incorporated input by the residents was approved. The City plan featured permission to build more than one thousand new housing units.

The first major violators of the Hod El Tabel treaty were residents of the Palestinian Authority-controlled areas who desired to become recognized as residents of Jerusalem. By proving that they live and conduct their lives in the Jerusalem Municipality, they can apply for a Jerusalem residency permit, which has various economic and political advantages. Criminal elements from outside Beit Hanina joined in the illegal building spree, squatting on land and rapidly erecting new structures. Some of this construction was on land earmarked for public use, such as roads, a new school, and sidewalks. The frenzy of illegal building caused fear among the normally law-abiding residents of Hod El Tabel, some of whom complained to the City only after persons building illegally rejected their entreaties to stop. The residents fully intended to honor the treaty, but the spiral of illegal building forced them to erect cement walls around the perimeter of their land to defend their property against encroachment. As a result, the once scenic and rural Hod El Tabel has become a virtual maze of bare cement fences, scarring the environment (Appendix 3, images 27 and 28), and placing in doubt the hopes for the enforcement of a cohesive City plan.

On a larger scale, the failure to enforce the Hod El Tabel treaty has caused the City to lose credibility in the eyes of Jerusalem's Arab residents. In the opinion of one senior City official, who prefers to remain anonymous, this entire fiasco could have been avoided had the Municipality rigorously enforced the terms of the treaty, and immediately demolished the first few newly erected illegal structures. However, due to inaction on the part of the authorities, a message was perceived in the Arab sector that building illegally is unlikely to be punished, even when it violates a newly signed treaty. Despite this, Arab residents in other neighborhoods have petitioned the

Municipality, in the hope of concluding a 'treaty.' Notwithstanding the risk, there exists a willingness on the part of many Arabs to work with the Municipality for their mutual benefit.

### **Long-term Consequences of Illegal Building**

***The consequences of illegal construction are savings to the individual who breaks the law followed by increased costs to the public when it attempts to provide infrastructure for public services.*** Sometimes illegal construction vitiates the possibility of later providing proper infrastructure, as is the case with structures that are not set back the proper distance from the street. The likely result: that a street may never again be wide enough to accommodate two-way traffic; nor will it have sidewalks that safeguard pedestrians. Also buildings that do not meet code present an ongoing risk, such as when the Versailles banquet hall collapsed killing 23 (in a Jewish industrial/commercial area), or if an earthquake should strike, as has been forecast.

***Some Arab leaders recognize that whatever its political utility, illegal construction has deleterious effects on the daily life of the residents, especially in the Arab neighborhoods.*** To reiterate Nusseibeh's well-founded fears, we are facing a "disaster...as far as the environment and the City is concerned...unless people take another look and begin seriously, once again, to plan." Nusseibeh also reasoned that the gangs that build illegally on land that does not belong to them should be thrown into jail, rather than be allowed to persist in illegal conduct. Azam Abu Saud, the Director General of the Office of Arab Commerce in Jerusalem, spoke to this issue in the newspaper *Al Quds*. Abu Saud reasoned that ignoring the planning law encourages violence and injures the rights of others, as when they build (illegally) without leaving the proper space between buildings and when people build on roadbeds. At the risk of deviating publicly from the Palestinian Authority's position, he recommended pulling down illegal structures. Parenthetically, the Palestinian Authority is faced with illegal building in the Municipality of Gaza. Mayor On A-Shawa explained, "In the recent period there is an increase in the number of illegal structures that damage the urban planning of the city." The local government reacted by initiating a campaign to demolish illegal structures.

Keep in mind that these demolitions occurred under the rule of the same Palestinian Authority that attempts to turn every instance of demolition in the Arab areas of Jerusalem, regardless of its factual and legal justification, into an international incident. According to one report in *The Washington Post*, Palestinian Authority bulldozers "flattened" Fatima Abu Suayed's house, with all her possessions inside, because they claimed that it was illegally constructed on "Palestinian State Property." According to the account, "a bulldozer plowed down more than 20 homes." No mention was made of any legal process or safeguards. Other than one small Gaza-based NGO, none of the critics that regularly attack the Jerusalem Municipality and the State of Israel uttered a word of protest.

### **The Global Epidemic of Illegal Building and Demolitions**

***The use of demolitions by authorities struggling to cope with illegal construction is by no means limited to Jerusalem.*** In recent decades, municipalities and governments in all parts of the world have grappled with the issue of illegal building. It is instructive to consider the following example from Lebanon:

The army used troops and bulldozers to demolish what were described as illegally built houses and shops in a shantytown on the southern outskirts of the capital city. The demolished buildings belonged to Muslim war refugees, who were accused by an official of putting up their structures on land belonging to the government and private citizens. Officials indicated that 35 buildings were demolished in one day, but visits to the area indicated that the

number could be much higher. One official claimed that he had warned those living in the shantytown that demolition was imminent. One woman screamed, "My house has gone." Soldiers who fired their rifles into the air kept excited residents away from the demolition work.

Moreover, demolitions have been carried out in such countries as India, Yugoslavia (by UN peacekeepers at that!), United States, Australia, the Philippines, and Nigeria. Indeed, ***they have occurred on every continent, with the exception of Antarctica.***

Political interest in assessing the conduct of these governments is minimal. Contrary to the furor that demolitions in Jerusalem attract, to the best of this Author's knowledge, not a single human rights group, international body, or foreign government has criticized demolitions in any of these other countries. Thus, rather than being *sui generis*, Jerusalem is an example of the worldwide phenomenon of illegal building. Further, the severe implications of illegal building, as recognized in a variety of other countries, is, in the case of Jerusalem, being obscured by venomous and unsubstantiated, politically-inspired allegations.

## Conclusions

***Illegal construction is fast becoming the norm throughout Jerusalem.*** The magnitude of the problem is most pronounced in the Arab neighborhoods where thousands of illegal units, many of them substantial structures, are scattered across the landscape, frequently on ***land that does not even belong to the builder.*** Common wisdom blames it all on poverty, cultural factors, and discrimination and manipulation by the City of Jerusalem and the State of Israel. Overlooked are factors that, in recent years, have become the two cardinal reasons for today's illegal building epidemic. First, illegal construction enjoys the political and economic backing of the Palestinian Authority and various foreign factors including Arab states and, indirectly, the European Union. Second, lucrative illicit profits accrue to those who build illegally.

NGOs, often appropriating the propitious title 'human rights organizations,' reiterate their condemnations of Israeli policy *ad nauseam*. These include that the City's legal machinations make it virtually impossible for Arabs to comply with the Planning and Building Law; that it systematically rejects most Arab applications for building permits; that the Arabs have no choice but to build illegally to accommodate their large families; that the Municipality is 'zealous' in enforcing the law - but only against Arabs; and that Israel is in flagrant violation of international human rights and humanitarian law, particularly as regards its use of demolition. The critics' prolific narrative continues that the damage caused by what they deem to be 'discrimination' is simultaneously the result of, and compounded by, denying the Arabs residents the opportunity to participate in the decision-making processes by which their neighborhoods are planned. They also complain of discrimination in the delivery of public services and amenities, which is also attributed to malevolent intent. Many of the critics even evince a nefarious design behind these policies - the 'Judaization' of Jerusalem via demographic manipulation. They variously impute to the City, its Mayor, and/or the State of Israel a plot to force Arab residents to emigrate from Jerusalem while ignoring the fact that, ***notwithstanding all the complaints that the City mistreats its Arab residents, thousands of new illegal Arab migrants arrive yearly from the West Bank.*** Finally, these accusations are couched in the terminology of international law, while failing to inform the public that the law they reference is soft (less than authoritative), ambiguous, and/or actually sanctions the Municipality's planning enforcement actions.

These inventions and malicious assumptions are conveniently translated into the image of a large, poor Arab family, forced out of their house in the middle of a rainy winter, on the order of the Mayor. This makes it easy for the poorly informed public to align its sympathies with the

'victims' of the uncaring municipal bulldozers. Why should the media, international or even Israeli, search to find the deeper causes and motives bound up in this enigma?

It turns out, upon examination, that ***not one of these accusations is correct***. Taking a fresh look at the matrix of issues surrounding illegal building, of which infrequently carried out demolitions are merely the most visible aspect, this Author believes that a more complex, and quite different, reality emerges. First, not only is there no explicit or implicit policy for 'Judaizing' Jerusalem, but statistics prove that the non-Jewish percentage of the population has steadily increased since 1967. Second, ***despite the proffered justifications of culture and poverty, it is clear that the political calculations of the Palestinian Authority as well as criminal avarice are the preponderant causes for the copious increase in illegal building***. Third, the Municipality uses administrative demolition cautiously and as a tool of last resort against structures, usually uninhabited, which could never be granted a permit, even retroactively. These same considerations regulate the use of demolition in Jewish neighborhoods, where this tactic is also employed, as the Municipality deems necessary. Administrative and judicial safeguards exist to protect against abuse of this measure, making mistakes infrequent. Fourth, the fervent denunciations of the Municipality for supposedly hindering the granting of building permits and charging of exorbitant fees are completely unsubstantiated.

This prompts the question that if there is no substance to the 'Judaization' charge, and together with the evident negative publicity that demolitions generate, why has the Municipality been carrying them out? The consequences of unfettered illegal building are extremely grave for the environment, public safety, and the quality of life. This is true not only in the City's Arab neighborhoods, but for the entire region due to its retarding effect on regional economic development and capital accumulation. Thus, for example, demolitions are carried out in order to safeguard green, red, and brown areas (see Section VII. A), whose purpose is either to preserve space for future development and for the construction of public infrastructure. As Deputy Mayor Uri Lupolianski pointed out, "we must, for professional planning reasons alone, prevent the City from becoming a jungle." Ironically, by turning demolitions in the Arab neighborhoods of Jerusalem into a *cause célèbre* and hindering the implementation of coherent urban plans, the critics are actually prejudicing the affordability of infrastructure improvements in the future and even hastening the erosion of the quality of life for the Arab residents.

If one expands the horizon to consider the worldwide use of demolition (to cope with illegal building), many striking similarities and one stark difference are revealed. The difference is the nearly complete lack of publicity when other governments demolish *vis-a-vis* the incessant denunciation of rather infrequent demolitions by the Jerusalem Municipality. Of course, it may be asserted that Israel is 'different' since demolitions carried out by the Jerusalem Municipality (at least those in the Arab neighborhoods) are viewed as political. Yet, the demographic facts discredit claims that there is a policy of 'Judaization' and, additionally, tangible efforts are made to enable Arab residents to build legally and become involved in neighborhood planning. The most rational explanation, therefore, is that these demolitions in Arab neighborhoods are being conducted under Israeli auspices in response to the serious danger posed by illegal building, as a policy analogous to those pursued by dozens of diverse countries. ***It is easy to oppose demolitions. But the many critics of demolition have failed to come forward with a viable alternative that, as a final backstop, will protect the future livability of Jerusalem.***

In summation, illegal building severely mortgages the City's future. People who love this City, regardless of their political views, ethnicity, or nationality, should unite to turn the tide against those who undermine Jerusalem's quality of life with illegal building. They should show zero tolerance for this dysfunctional scourge, wherever it manifests itself.